

## Kathleen Hayden

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**Sent:** Friday, March 15, 2019 11:26 AM  
**To:** Basil Seggos; Bradley C. Lambert; C. Edmon Larrimore; Charlie Burd; David Bunn; Deborah Wells; Dwight Keen; Harold Fitch; J. Dale Nations; Jess New (Mississippi); John Baza; Jon Williams; Kenneth.Wagner@ee.ok.gov; Lawrence Bengal; Loraine Cory; Lynn Helms; Mark Watson; Matt Lepore; Nick Tew; Paul Schmierbach; Richard Ieyoub; Richard M. Perry; Richard Simmers; Ron Efta; Russell Retherford; Scott Perry; Tom Schultz; Wayne Christian; William Daugherty; William Sydow; Baker Allen; Barry Williamson; bridget.hill1@wyo.gov; Catherine Dickert (New York); Cathy Foerster; Charlie Williams Jr.; Chris Weiser; Christi Craddick; D. Michael Wallen (mwallen@mhp.energy); Dan Seamount; David Hardie; Donald Mason; Edward Cross; Gary Ross; Ines Piccinino; J. Nelson Wood [REDACTED]; Jim Halvorson; Kathleen Staks; Kenneth Harris; Leslie Bakken Oliver (lboliver@nd.gov); Martin Brand (NY); Michael Visser; Rick Calhoon; Rick Cooper; Ryan Hoffman; Sam Barbee; Sandy MacMullin; Scott Dawson; Scott Lampert; Shane Khoury; Trevor Swan; William C. Myler; Mike Lees; 'Lohrenz, Eric' Adam Wygant; Leslie Savage; Hannah Phan; Amy Childers; Mike Paque  
**Cc:**  
**Subject:** Letter concerning EPA's determination under the RCRA Subtitle D Consent Decree  
**Attachments:** Letter to Administrator Wheeler.pdf

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Dear IOGCC Official and Associate Representatives,

Attached for your information is a letter Mike Paque and I sent on behalf of the State Oil and Gas Regulatory Exchange concerning EPA's pending determination on the need for additional regulation of oil and gas wastes under Subtitle D of the Resource Conservation and Recovery Act.

Please let me know if you have any questions.

Respectfully,  
Lori

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March 13, 2019

The Honorable Andrew Wheeler  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Washington, D.C. 20460

Re: Consent Decree, *Environmental Integrity Project, et al. v. McCarthy*, Case No. 1:16-cv-00842-JDB (D.D.C. filed Dec. 28, 2016)

Dear Administrator Wheeler,

The Interstate Oil and Gas Compact Commission (IOGCC) and the Ground Water Protection Council (GWPC) have joined in partnership to support states in their ongoing processes of continuous regulatory improvement. This joint effort, called the State Oil and Gas Regulatory Exchange (the Exchange), assists state regulatory agencies in assessing and strengthening their regulatory programs for the environmentally sound development of their oil and gas resources.

The Exchange also provides a forum for states and the U.S. Environmental Protection Agency (EPA) to work cooperatively to address issues of mutual concern. One such issue is the proper management of oil and gas exploration and production wastes under Subtitle D of the Resource Conservation and Recovery Act (RCRA).

Today we are writing on behalf of the Exchange to again urge EPA to determine that additional RCRA Subtitle D regulation of oil and gas exploration and production wastes is not necessary. We are also offering to assemble the knowledge and experience of the Exchange participants and compile data and information necessary for EPA to make a sound determination. Following is a brief history of the issue to establish the basis for this offer.

In its 1988 regulatory determination, EPA stated that oil and gas exploration and production wastes pose no significant threat to public health or the environment when managed in accordance with existing federal and state programs. EPA further determined that these existing programs were generally adequate for oil and gas exploration and production wastes. Since EPA's 1988 regulatory determination, the states have acted promptly and proactively to amend their regulations to fill any gaps and address emerging issues, such as storage, transportation, and disposal of hydraulic fracturing wastes, management of naturally occurring radioactive materials, and recycling and reuse of drilling wastes and produced fluids.

In December 2016, the U.S. District Court for the District of Columbia issued a Consent Decree to settle a suit by several environmental organizations over the alleged failure by the EPA to

update its rules for management of oil and gas exploration and production wastes under RCRA Subtitle D. The settlement commits EPA to either propose revisions to the regulations or determine that it does not need to revise the regulations by March 15, 2019.

EPA need not revise the regulations for oil and gas exploration and production wastes under RCRA Subtitle D. Considering the long history of state leadership and the comprehensive state programs protecting human health and the environment, additional federal regulation is an unnecessary use of federal authorities and resources that is unlikely to solve the particular regulatory issues presented in various oil and gas producing regions. The states are better situated to quickly and carefully tailor their regulatory programs in response to the various operational developments and environmental challenges within their borders.

The Exchange is uniquely qualified to work cooperatively with EPA to better define and address oil and gas regulatory issues. Our past successes have included: the establishment of the FracFocus chemical disclosure registry; the publication of a primer on managing the risks of induced seismicity and a report on considerations in regulating underground gas storage; and the performance of regulatory consultations upon the request of individual states. These successes demonstrate our ability to focus the expertise and experience of our member states, federal affiliates, and other partners on creating solutions to complex regulatory issues.

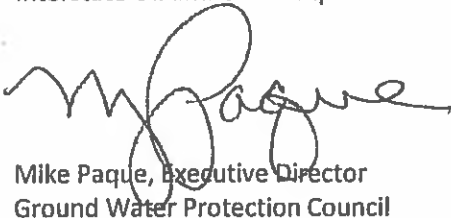
Regarding Subtitle D, the Exchange proposes to assist EPA by compiling data and information on recent state actions to strengthen their regulatory programs. This compilation, to be updated annually, will document the continuous regulatory improvements demonstrated by the states in addressing waste management and other environmental concerns related to the development of oil and gas resources. It will be the most current, accurate, and comprehensive resource of its kind, and a resource otherwise unavailable to EPA.

We look forward to further discussions with you and your staff concerning this proposal and other potential cooperative efforts.

On behalf of the State Oil and Gas Regulatory Exchange:



Lori Wrotenbery, Executive Director  
Interstate Oil and Gas Compact Commission



Mike Paque, Executive Director  
Ground Water Protection Council